IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 508

THELMA LEVY, in her capacity as administratrix of the succession of LOUISE LEVY and as the tutrix of and on behalf of the minor children of LOUISE LEVY, said children being: RONALD BELL, REGINA LEVY, CECILIA LEVY, LINDA LEVY, and AUSTIN LEVY,

—v.—

The STATE OF LOUISIANA through the CHARITY HOSPITAL OF LOUISIANA at NEW ORLEANS BOARD OF ADMINISTRATORS and W. J. WING, M.D. and A.B.C. INSURANCE COMPANIES.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

APPELLANT'S REPLY BRIEF

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There is no support for Section I of the Appellees' Brief in Support of Motion to Dismiss and/or Affirm. Appellant does not claim that Article 2315 of the Louisiana Civil Code is constitutionally incapable of authorizing recovery. The claim is rather that the statute is invalid for denying recovery in this action on the basis of an arbitrary classification. It is settled that the appellate jurisdiction of this Court extends to such a claim. E.g., *Griffin* v. *Illinois,* 351 U. S. 12 (1956).

Section II of Appellees' Brief, which deals only with questions of State law, is irrelevant to the claim made by Appellant under the Constitution of the United States.

Section III of Appellees' Brief does not respond to any of the contentions contained in the Jurisdictional Statement supporting the substantiality of the question presented in this case.[1] Its primary reliance on *Morey* v. *Doud*, 354 U. S. 457 (1957), is wholly misplaced. That case involved an economic regulatory statute. For thirty years this Court has adhered to the rule according States and the federal government the widest discretion in the power to classify under such statutes. As the Jurisdictional Statement makes clear (pp. 9-10), the principles of constitutional adjudication on which this rule rests are inapplicable to a statute, such as the one in issue, that determines legal rights on the basis of ancestry and blood relationship. E.g., *Korematsu* v. *United States*, 323 U. S. 214 (1944); *Oyama* v. *California*, 332 U. S. 633 (1948).

The two lower court decisions referred to in Appellees' Brief are neither apposite nor persuasive as to the merits of the question presented here. The District Court in *Benjamin* v. *Hardware Mutual Casualty Co.*, 244 F. Supp. 652, 653 (W. D. La. 1965), stated explicitly that "[Article 2315] is not under attack in this proceeding." The other case, *Glona* v. *American Guarantee & Liability Ins. Co.*, 379 F. 2d 545 (5th Cir. 1967), involved the question, plainly dis-

[1] The only argument that approaches a contention on the merits is the suggestion at page 12 that a contrary decision in the present case "would invite chaos." The dispositive answer to this unsupported statement is that Louisiana is apparently the only State that denies illegitimate children the right to sue for the wrongful death of their mother, and "chaos" has not been visible in the other 49 jurisdictions. The reason is, of course that problems of proof in maternity actions are virtually non-existent.

tinguishable in principle from the one presented here, of whether a *mother* could maintain an action under Article 2315 for the wrongful death of her illegitimate son. Denial of recovery to the mother involves neither the problem of economic dependence of child on mother that exists here nor the manifest inequity of punishing individuals—the illegitimate children—for the acts of others over whom they could have no control. In addition, neither *Benjamin* nor *Glona* is intrinsically persuasive because there is no attempt in either opinion to justify the conclusion or even explain the process by which the conclusion was reached.[2]

In precise terms the question presented in this case is whether a State can deny dependent children, on the sole ground that they are illegitimate, any right to recover in tort against those wrongfully responsible for the death of their mother. Louisiana is apparently the only jurisdiction that sanctions this result. In so doing, it punishes blameless individuals for the acts of others, does so without any empirical justification, and contravenes some of the most conspicuous decisions of this Court holding that a State can not validly classify individuals on the basis of their ancestry.

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[2] A Petition for Certiorari was filed in the *Glona* case on September 20, 1967. No. 639, 36 U. S. L. Week 3107 (September 26, 1967).

For these reasons a substantial question under the Constitution is presented in this case, and jurisdiction should be noted.

Respectfully submitted,

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